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November 19, 2007

VIA HAND DELIVERY

Honorable William H. Pauley  
United States District Court  
Southern District of New York  
500 Pearl Street  
Chambers 2210  
New York, NY 10007

Re: *Berry v. Deutsche Bank Trust Company Americas, et al.*  
S.D.N.Y. Case No.: 1:07-cv-7634 WHP

Dear Judge Pauley:

My firm is co-counsel for two of the named defendants in the above-captioned action: Deutsche Bank Trust Company Americas and JP Morgan Chase Bank (the "Bank Defendants").

Plaintiff Wayne Berry initially filed this case against the Bank Defendants in the United States District Court for the District of Hawaii in March of this year. The Hawaii District Court transferred this case to the Southern District of New York pursuant to a transfer order it entered on August 13, 2007. Upon transfer, the case was originally docketed and assigned to the Honorable Harold Baer, Jr. Due to a conflict, however, Judge Baer never formally presided over the action. The matter was then reassigned to the Honorable Paul A. Crotty and, subsequently, to the Honorable Richard M. Berman and to the Honorable Richard J. Holwell, all of whom have declined the case. We have now learned that the case has been reassigned to Your Honor.

I am attaching a letter we first sent to Judge Baer's chambers on August 30, 2007. This letter both explains the posture of the case against my clients at the time of the transfer and attaches a stipulation between Plaintiff and the Bank Defendants tolling the Bank Defendants' deadline to respond to Plaintiff's Amended Complaint until such time as the Court holds a status conference (the statutory deadline for the Bank Defendants to respond passed on September 4, 2007). None of the prior judges assigned to this case has taken action with respect to the parties' stipulation.

As explained in the attached letter, the parties agreed upon the stipulated extension (which is the first extension with respect to the Amended Complaint) in order to obtain guidance

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from the Court as to how best to proceed in light of, among other things, the transfer to this District, the Bank Defendants' pending motion to dismiss Plaintiff's initial Complaint, Plaintiff's pending cross-motion for partial summary judgment, and Plaintiff's Amended Complaint (which was filed after the transfer order but before the case was docketed in this District, and while the parties' respective dispositive motions remained pending). The Bank Defendants anticipate moving to dismiss the only new claim Plaintiff asserts against them in his Amended Complaint, a RICO claim. The remainder of the Amended Complaint is unchanged from the complaint Plaintiff initially filed in Hawaii, for which the Bank Defendants' motion to dismiss (and Plaintiff's cross motion for partial summary judgment) remains pending.

In light of the reassignment, the Bank Defendants respectfully renew their request that the Court approve the attached stipulation. In conjunction therewith, they also request that the Court set a status conference to discuss the management of this case going forward and the appropriate mechanism by which the Bank Defendants should present their motion to dismiss Plaintiff's RICO claim (i.e., a supplemental motion, an amendment of the pending motion, etc.). If you have any questions or would like additional information, please do not hesitate to contact me. I can be reached at (213) 680-8225.

*Application granted. The Court will hold a status conference on December 7, 2007 at 10:00 a.m.*


SO ORDERED:

  
WILLIAM H. PAULEY III U.S.D.J.

*11/30/2007*

Encl.

Best regards,



Erin N. Brady  
Pro Hac Vice Motion Pending

cc: Timothy Hogan, Esq.  
(counsel for Plaintiff Wayne Berry) - *via email*  
Robert Penchina, Esq.  
(counsel for Defendant General Electric Capital Corporation) - *via facsimile*  
Christopher May Mason, Esq.  
(counsel for Defendant C&S Wholesale Grocers, Inc.) - *via facsimile*